

## REMARKS

This Amendment is submitted in reply to the Non-Final Office Action mailed on July 9, 2009. No fees are due herewith this Amendment. The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00685 on the account statement.

Claims 1-13, 16-31, 36-37, 44-52, 63-71, 74-75, 80-82 and 86-95 are pending in the application. Claims 14-15, 33-35, 38-43, 53-62, 76-79 and 83-85 were previously canceled without prejudice or disclaimer. In the Office Action, the drawings and Claim 11 are objected to. Claims 12, 27-32, 36-37, 50, 64-66, 69, 74, 81, 86-90 and 91-95 are rejected under 35 U.S.C. §112. Claims 1-13, 16-31, 36-37, 44-52, 63-71, 74-75, 80-82 and 86-95 are rejected under 35 U.S.C. §102. Claim 89 is rejected under 35 U.S.C. §103. In response, Claims 1, 11-12, 27-32, 50, 64-66, 69, 74, 81, 86-93 and 95 have been amended and Claims 19, 44-46, 52 and 93-94 have been canceled without prejudice or disclaimer. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 11, line 15-page 13, line 5; page 14, lines 19-23; Figures 2, 4, 5-11. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, the drawings are objected to under 37 CFR 1.83(a). The Patent Office alleges that the first and second wall forming a "V" shape of claim 80 must be shown or the features canceled from the claims. See, Office Action, page 2, lines 3-6. In response, Claim 80 has been canceled without prejudice or disclaimer. Accordingly, Applicants respectfully request that the objection of Claim 11 be reconsidered and withdrawn.

In the Office Action, Claim 11 is objected to under 37 CFR 1.75(c) as being of improper dependent form because Claim 11 is dependent on Claim 11 instead of Claim 1. See, Office Action, page 3, lines 2-7. In response, Applicants have amended Claim 11 to depend from Claim 1. The amendment does not add new matter and is solely for clarification purposes. Accordingly, Applicants respectfully request that the objection of Claim 11 be reconsidered and withdrawn.

In the Office Action, Claims 12, 27-32, 36-37, 50, 64-66, 69, 74, 81, 86-90 and 91-95 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly

point out and distinctly claim the subject matter which applicant regards as the invention. See, Office Action, page 3, line 12-page 4, line 15. In response, Applicants have amended Claims 12, 27-32, 36-37, 50, 64-66, 69, 74, 81, 86-90 and 91-95 to correct informalities and incorrect antecedent basis. The amendments do not add new matter and are solely for clarification purposes. Accordingly, Applicants respectfully request that the rejection of Claims 12, 27-32, 36-37, 50, 64-66, 69, 74, 81, 86-90 and 91-95 be reconsidered and withdrawn.

In the Office Action, Claims 1-13, 16-32, 36-37, 63-70, 74-75, 81-82, 86-88 and 90-95 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,205,775 to Swan ("Swan"). Claims 1-18, 21-27, 36, 44-52, 63-66, 86-90 and 93-95 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,101,167 to Styler ("Styler"). Claims 1-13, 16-18, 23-26, 44-52, 63-71, 74-75 and 80 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,000,210 to Bayless ("Bayless"). However, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

Currently amended independent Claim 1 recites, in part, containers comprising closing means comprising a longitudinal wall for closing the product outlet opening, the container body further comprising stiffening means for maintaining the container body in an open condition, the stiffening means located at, and forming at least a portion of, the outlet opening, the stiffening means being connected to at least one outer wall of the container. Currently amended independent Claim 86 recites, in part, blanks for making a container wherein the side walls extend from the first and second outer edges, on the side opposite the one on which the upper panel is connected to the transversal end of the side panel of the container body, the blank further comprising tabs extending, through pre-creasing or fold lines, from rear and front side walls of the container, forming means for connecting a transverse stiffening wall to the front side walls and to the rear side walls of the container body. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 11, line 15-page 13, line 5; page 14, lines 19-23; Figures 2, 4, 5-11.

Using the presently claimed container provides several advantages. For example, the container makes it possible to channel disk-shaped pieces with a diameter greater than the width of the front guide wall, it is easily gripped by a user, holds a relatively large quantity of edible product, is extremely easy to manufacture and provides an especially "effective seal" since the

engagement and retaining means which hold the lid snapped shut on the body are located at the front wall which is opposite the rear where the rotation hinge that connects to the lid to the container body is positioned. Further, the special shape of the container body gives the snap-shut retaining tab on the front wall optimum elasticity, so that, when the tab engages with the teeth on the lid, there is a clear, characteristic noise or "click." Moreover, the use of stiffening means advantageously holds the container body in an open position. See, specification, page 18, line 31-page 19, line 29. In contrast, however, Applicants respectfully submit that the cited references fail to disclose each and every element of the present claims.

For example, *Styler* and *Bayless* fail to disclose or suggest containers comprising closing means comprising a longitudinal wall for closing the product outlet opening, the container body further comprising stiffening means for maintaining the container body in an open condition, the stiffening means located at, and forming at least a portion of, the outlet opening, the stiffening means being connected to at least one outer wall of the container as is required, in part, by independent Claim 1. Instead, *Styler* is entirely directed toward an automatic bottom hexagonal carton that may be glued and assembled before shipment to a customer. See, *Styler*, Abstract; column 1, lines 9-13. At no place in the disclosure does *Styler* disclose or suggest a stiffening means that is located at, and formed at least a portion of, the outlet opening. Instead, the Patent Office alleges that the "opening" of *Styler* is the carton in the open position and that the partial dust flap (54) is a stiffening means. However, the partial dust flap (54) of *Styler* has nothing to do with, and is not even located near, an outlet opening of the carton of *Styler*. Since *Styler* fails to disclose or suggest each and every element of the presently claimed devices, *Styler* fails to anticipate the present claims.

*Bayless* is entirely directed to cartons or boxes and containers of polygonal cross section that are made from unitary blanks of folded material. The tops of the cartons of *Bayless* are closed off by the outer end flap 19 and do not have any closing means that comprise a longitudinal wall. In fact, *Bayless* does not even suggest any closing means that extend in a vertical direction to form a longitudinal wall. See, *Bayless*, page 2, lines 3-63. At no place in the disclosure does *Bayless* disclose or suggest containers comprising closing means comprising a longitudinal wall for closing the product outlet opening as is required, in part, by the present

claims. Since *Bayless* fails to disclose or suggest each and every element of the presently claimed devices, *Bayless* fails to anticipate the present claims.

Further, *Swan* and *Styler* fail to disclose or suggest blanks for making a container wherein the side walls extend from the first and second outer edges, on the side opposite the one on which the upper panel is connected to the transversal end of the side panel of the container body, the blank further comprising tabs extending, through pre-creasing or fold lines, from rear and front side walls of the container, forming means for connecting a transverse stiffening wall to the front side walls and to the rear side walls of the container body as required, in part, by currently amended independent Claim 86. Instead, *Swan* is entirely directed toward polygonal containers having container sides and a bottom assembly that are adapted for interlocked engagement. See, *Swan*, Abstract. *Swan* discloses the use of "lid securement flaps 194, 196," which are hingedly disposed at the top edge of the side panels and are used to secure (via locking engagement) the corresponding securement panel distal edges of the lid. See, *Swan*, column 13, lines 40-62. Accordingly, the "lid securement flaps" of *Swan* cannot connect a transverse stiffening wall to the container body.

The Patent Office asserts that *Swan* discloses tabs extending through pre-creasing or fold lines from rear and front side walls forming means for connecting a transversal stiffening wall to front side walls and to rear side walls of the container body. See, Office Action, page 10, lines 7-10. However, Applicants respectfully disagree. As discussed above, the lid securement flaps 194, 196 do not connect a transverse stiffening wall to the front side walls and the rear side walls of the container body. Instead, the "lid securement flaps" secure to the lid of the container. The lid of the presently claimed container is not the same as the transversal stiffening wall. Since *Swan* fails to disclose or suggest each and every element of the presently claimed devices, *Swan* fails to anticipate the present claims.

*Styler* is entirely directed toward an automatic bottom hexagonal carton that may be glued and assembled before shipment to a customer. See, *Styler*, Abstract; column 1, lines 9-13. The partial dust flap of *Styler* (54) is simply a piece of cardboard that may be folded into the container of *Styler*. The partial dust flap (54) is not connected to the container of *Styler* by any tabs that are remotely equivalent to tabs of the present claims.

The Patent Office asserts that *Styler* discloses a blank comprising tabs for connecting a transversal stiffening wall to front and rear side walls. See, Office Action, page 14, lines 16-19. However, Applicants disagree. Instead, the partial dust flaps of *Styler* cannot be said to be connected to the container by via tabs. Indeed, the partial dust flap alleged to be equivalent to the transversal stiffening wall of the present claims by the Patent Office, are not even attached to the container body. The partial dust flap is simply folded into the container of *Styler*. See, *Styler*, column 5, lines 36-54; column 6, lines 5-21. Since *Styler* fails to disclose or suggest each and every element of the presently claimed devices, *Styler* fails to anticipate the present claims.

Further, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because the cited references fail to disclose each and every element of the present claims, the cited references fail to anticipate the present claims. For at least these reasons, Applicants respectfully submit that the cited references fail to anticipate the presently claimed subject matter.

Accordingly, Applicants respectfully submit that the anticipation rejections with respect to Claims 1-13, 16-31, 36-37, 44-52, 63-71, 74-75, 80-82 and 86-95 be reconsidered and withdrawn.

In the Office Action, Claim 89 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Swan* in view of *Styler*. Applicants respectfully submit that the patentability of Claim 86 as discussed above renders moot the obviousness rejections of Claim 89, which depends from Claim 86. In this regard, the cited art fails to teach or suggest the elements of Claim 89 in combination with the novel elements of Claim 86. Moreover, the Patent Office merely relies on the cited references to recite elements of the dependent claims. Therefore, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

Accordingly, Applicants respectfully request that the obviousness rejection of Claim 89 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

K&L GATES LLP

BY 

Robert M. Barrett  
Reg. No. 30,142  
Customer No. 29157  
Phone No. 312-807-4204

Dated: October 8, 2009